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IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1951.

No. 497

STATE OF ILLINOIS and the ILLINOIS COMMERCE COMMISSION,

Plaintiffs-Appellants,

vs.

UNITED STATES OF AMERICA and ILLINOIS CENTRAL RAILROAD COMPANY,

Defendants-Appellees,

and

INTERSTATE COMMERCE COMMISSION,

Intervenor-Defendant-Appellee.

PETITION FOR REHEARING.

IVAN A. ELLIOTT,
Attorney General of the State of Illinois,
Attorney for Appellants.

WILLIAM R. MING, JR.,
Special Assistant Attorney General.
MILTON MALLIN,
Assistant Attorney General.
JORDAN JAY HILLMAN,
Of Counsel.

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Defendants-Appellees,

and

INTERSTATE COMMERCE COMMISSION,

Intervenor-Defendant-Appellee.

PETITION FOR REHEARING.

MAY IT PLEASE THE COURT:

Now come appellants in the above cause, the State of Illinois and the Illinois Commerce Commission, by Ivan A. Elliott, Attorney General of the State of Illinois, and respectfully petition that a rehearing be granted from the order of this Court, entered on February 4, 1952, granting appellees' motions to affirm the judgment of the District

Court. In support of this petition appellants say as follows:

Under the terms of the Transportation Act of 1920, the Interstate Commerce Commission (I.C.C.) is vested with responsibility for the maintenance of an adequate and efficient national transportation system. Those decisions of the I.C.C. which require the application of technical expertise to the problems involved in carrying out this responsibility may properly be accorded a high degree of finality. Congress never intended, however, and this Court has never held that orders of the I.C.C. purportedly founded on the needs of the transportation system shall in every case be given unquestioned precedence over constitutional considerations which are fundamental to the existence of an efficiently coordinated federal system and over elemental concepts of administrative fairness. This Court in *North Carolina* v. *U. S.*, 325 U. S. 507 (1945), recognized this in holding that nothing in the Transportation Act vests in the I.C.C. plenary authority to fix intrastate fares and that the I.C.C. is without authority to provide for the alleged needs of the national transportation system by fixing intrastate fares on whatever arbitrary and unreviewable basis it deems expedient. Moreover, nothing in the Transportation Act or in the decisions of this Court has cast the I.C.C. in the role of the final arbiter of constitutional considerations profoundly affecting state-federal relations in our federal system. These matters present questions of a judicial character and should not be left to the final determination of an administrative agency. In this case the opinion below demonstrates that the District Court failed to recognize, and therefore could not have decided rationally, the substantial questions of law presented. Under these circumstances appellants respectfully submit that the disposition of this case by this Court through a *per curiam*

opinion without hearing, though it may terminate the present litigation, adds to, rather than reduces, the ambiguity necessarily resulting from the administrative and judicial opinions below. Since state regulation of public utility rates continues, this ambiguity will have a similarly continuing impact on carriers and state and federal officials alike. Summary action by the highest federal court in a case of this nature inevitably weakens the public confidence in the satisfactory resolution of the important problems of state-federal relationships.

Appellants submit that if both the substantive and procedural issues in this case are resolved in favor of the authority of the I.C.C., that "the primary authority of the states to regulate intrastate rates" will be reduced to a principle of passing historical interest. If the Court now considers that the I.C.C.'s conclusions as to the requirements of the national transportation system shall take precedence over every other principle of law and comity, this view should not be left to the indecisive inferences which are inevitably drawn from a *per curiam* opinion. If the principles so clearly enunciated in the *North Carolina* case no longer have meaning, then this should be directed to the attention of the federal and state agencies as well as to the carriers. If the *North Carolina* doctrine has withered through attrition, then this case and others like it will soon demonstrate that what results is not a political void, but rather an area of administrative confusion and uncertainty among both state and federal officials. If, however, the salutary principles in the *North Carolina* case retain the vigor with which they were once endowed, then we urge this Court, upon reconsideration of the facts and issues of this case, to set aside its order and set this cause for argument in order that the judgment of the District Court may be reversed.

Conclusion.

For the reasons stated above it is submitted that the order of this Court entered on February 4, 1952, granting appellees' motions to affirm the judgment of the District Court should be set aside, and the cause set for oral argument.

Respectfully submitted,

IVAN A. ELLIOTT,
Attorney General of the State of Illinois,
Attorney for Appellants.

WILLIAM R. MING, JR.,
Special Assistant Attorney General,
MILTON MALLIN,
Assistant Attorney General,
JORDAN JAY HILLMAN,
Of Counsel.

Certificate.

I certify that this petition for rehearing is presented in good faith and not for the purpose of delaying the final disposition of this cause.

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MILTON MALLIN,
Counsel for Appellant.

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CHARLES ELMORE CROPLEY
CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, A. D. 1951.

No. 479

STATE OF ILLINOIS and the ILLINOIS COMMERCE COMMISSION,
Plaintiffs-Appellants,

vs.

UNITED STATES OF AMERICA and ILLINOIS CENTRAL RAILROAD COMPANY,
Defendants-Appellees,

and

INTERSTATE COMMERCE COMMISSION,
Intervenor-Defendant-Appellee.

MOTION TO JOIN CERTAIN PARTIES IN PETITION FOR RE-HEARING.

WALTER E. WILES,
Attorney for Village of Flossmoor, Cities of Chicago Heights, Blue Island and Harvey, the Villages of Park Forest, Matteson, Homewood, Hazelcrest and Riverdale, and The Illinois Central Commuters Committee,
Joint Plaintiffs-Appellants.

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, A. D. 1951.

No. 479

STATE OF ILLINOIS and the ILLINOIS COMMERCE COMMISSION,

Plaintiff-Appellants,

vs.

UNITED STATES OF AMERICA and ILLINOIS CENTRAL RAILROAD COMPANY,

Defendants-Appellees,

and

INTERSTATE COMMERCE COMMISSION,

Intervenor-Defendant-Appellee.

MOTION TO JOIN CERTAIN PARTIES IN PETITION FOR RE-HEARING.

May It Please The Court:

Now come Village of Flossmoor, Cities of Chicago Heights, Blue Island and Harvey, the Village of Park Forest, Matteson, Homewood, Hazelcrest and Riverdale, and The Illinois Central Commuters Committee, joint appellants in the above cause, by Walter E. Wiles, their counsel, and respectfully move the court that they be per-

mitted to join in the Petition for Re-hearing filed in this cause by the State of Illinois, and the Illinois Commerce Commission by Ivan A. Elliott, Attorney General of the State of Illinois, and they do hereby adopt said Petition for Rehearing.

WALTER E. WILES,

Attorney for Village of Flossmoor, Cities of Chicago Heights, Blue Island and Harvey, the Villages of Park Forest, Matteson, Homewood, Hazelcrest and Riverdale, and The Illinois Central Commuters Committee,
Joint Plaintiffs-Appellants.

I do hereby certify that the above motion is presented in good faith and not for the purpose of delaying the final disposition of this cause.

WALTER E. WILES.

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CHARLES ELMORE CROPL
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1951.

No. 496

STATE OF ILLINOIS and the ILLINOIS COMMERCE COMMISSION,
Plaintiffs-Appellants,

vs.

UNITED STATES OF AMERICA and ILLINOIS CENTRAL RAILROAD COMPANY,
Defendants-Appellees,

and

INTERSTATE COMMERCE COMMISSION,
Intervenor-Defendant-Appellee.

SUGGESTIONS BY THE CITY OF CHICAGO, AMICUS CURIAE, IN OPPOSITION TO THE MOTIONS TO AFFIRM FILED BY APPELLEES IN THE ABOVE ENTITLED CAUSE.

JOSEPH F. GROSSMAN,
Special Assistant Corporation Counsel,
Attorney for Amicus Curiae,
City of Chicago.

CHAMPLIN-SHEALY COMPANY, CHICAGO 303

argument heretofore filed herein by the Illinois Central Railroad Company and the Interstate Commerce Commission, appellees. The interest of the City of Chicago in the denial of said motions will appear more fully from the matters hereinafter set forth.

STATEMENT.

This is an appeal from an order of a three-judge district court, entered on October 31, 1951, A. D., refusing to enjoin the enforcement of an order of the Interstate Commerce Commission which prescribed the rates to be charged on appellee Illinois Central Railroad Company's intrastate suburban passenger system. The action culminating in this decree was begun by a complaint filed in the United States District Court for the Northern District of Illinois, Eastern Division, by the State of Illinois and the Illinois Commerce Commission on August 17, 1951 in which these plaintiffs questioned the jurisdiction of the Interstate Commerce Commission to enter the order complained of, and the sufficiency of the evidence before said Commission to sustain its jurisdiction and support said order. Immediately after the filing of the complaint, City of Chicago, in its own corporate right and as the representative of its inhabitants intervened in the proceeding, adopting the complaint of the plaintiffs and, in addition, alleging that the order of the commission was discriminatory, unsupported by requisite findings of fact, inconsistent, and unsupported by the evidence. The history of the proceedings before the three-judge court up to and including the entry of the order of October 31, 1951 is adequately set forth in the statement as to jurisdiction heretofore filed herein by the appellants State of Illinois and Illinois Commerce Commission. Copies of the opinion of the district court appear as appen-

dix A to said statement as to jurisdiction and as part of the certified record on appeal herein.

On November 16, 1951 A. D., the petition of the State of Illinois and the Illinois Commerce Commission for leave to appeal to this Court from the order of the district court was filed and allowed; the appeal papers herein were served on November 19, 1951. The assignment of errors and statement as to jurisdiction filed therewith indicate that the plaintiffs-appellants raise the following questions: (1) Did the Interstate Commerce Commission have the authority to issue an order prescribing increased intrastate fares for the defendant railroad where such fares had been exclusively maintained under the authority of the State of Illinois and where there was presently pending in the courts of the State of Illinois an appeal from an order by the Illinois Commerce Commission denying the same increases? (2) Did the fares in effect prior to the order of the Interstate Commerce Commission cause discrimination against interstate commerce? (3) Did the court below properly discharge its duty in setting forth, as its findings of fact, statements as to what the report of the Interstate Commerce Commission contained without reference to the evidence in the record detracting from the evidence which might support the order?

On December 3, 1951 the Illinois Central Railroad Company and the Interstate Commerce Commission served and filed with the clerk of the district court motions to affirm the judgment of the three judge district court, containing arguments in opposition to the jurisdiction of this Court on appeal. These arguments were only directed against the contentions of the plaintiffs-appellants State of Illinois and the Illinois Commerce Commission.

Prior to the service of said motions, i.e., on November 30, 1951, the petition of the intervenor City of Chicago for

leave to appeal was filed and allowed by the district court. The order allowing such appeal, a copy of which appears in the certified record, provides:

> "IT IS FURTHER ORDERED that said appeal be allowed separate and apart from the appeal heretofore allowed from said final judgment and decree to the plaintiffs herein, the State of Illinois and the Illinois Commerce Commission."

The city's appeal papers were served by mail on December 3, 1951. The record, appearance fees and appearance of counsel for City of Chicago were transmitted to the clerk of this Court before December 25, 1951. This appeal was docketed in this Court as No. 497.

The assignment of errors and statement as to jurisdiction filed by the City of Chicago raise the following questions: (1) May the Interstate Commerce Commission prescribe rates which, although their total effect on the revenue is reasonable, discriminate unjustly against one group of the carrier's passengers in favor of another group? (2) Was the order of the Interstate Commerce Commission void for failure to make findings to support a basis for the carrier's suburban rates which discriminated against certain of the carrier's passengers? (3) Was the order of the Commission so inconsistent, vague and insufficient on its face to render it void? (4) Was the finding of the Commission that the prescribed fares were just and reasonable supported by substantial evidence to overcome the contention that the fares so prescribed were unreasonably discriminatory?

As of December 28, 1951, ten days after the expiration of the time allowed by Rule 12(3) of this Court, no statement in opposition to the jurisdiction of this Court and no motion to affirm or dismiss was filed in the separate appeal of the City of Chicago.

The City of Chicago, amicus curiae here, is the appellant in a separate appeal from the same order and decree of the

three-judge district court involved in this appeal. No motions similar to those in question herein, have been filed in the City's appeal, and it is therefore impossible for the City of Chicago to draw this Court's attention to the fact indispensable to the consideration of the motions to affirm pending in this Court that two separate appeals have been taken from the same order and decree, without these suggestions by, amicus curiae, of the City of Chicago which is not a party of record in this appeal.

Comparison of the statements as to jurisdiction and the assignments of errors filed in the two appeals will indicate that the issues presented in each appeal are entirely separate and distinct. The appeal of the State of Illinois and the Illinois Commerce Commission questions the jurisdiction of the Interstate Commerce Commssion to enter the order complained of under Section 13(4) of the Interstate Commerce Act. The appeal of the City of Chicago, however, raises questions as to the validity and propriety of the decision and order of the Commission, assuming that it had jurisdiction.

The motions filed in this appeal, request that this Court affirm the order of the three-judge district court without oral argument, and, in support thereof, present only arguments directed against the statement as to jurisdiction filed in this appeal, without mentioning the issues raised by the City of Chicago, appellant in Docket No. 495. Were this Court to grant the relief requested by the motions in this appeal without considering the matters raised in the appeal of the City of Chicago, such action would seriously interfere with this Court's consideration of the merits of the City's case on its appeal, if not foreclose the City from the relief to which it would otherwise be entitled should its contentions be sustained following the submission of briefs and full argument.

SUGGESTIONS.

For the reasons above stated, City of Chicago, as *amicus curiae* herein, and intervenor-appellant in Docket No. 497, respectfully urges that the motions of appellees to affirm without argument be denied, or, in the alternative, that consideration of them be deferred until after consideration by this Court of the separate appeal of the City of Chicago in Docket No. 498.

Respectfully submitted,

JOSEPH F. GROSSMAN,
Special Assistant Corporation Counsel,
Attorney for Amicus Curiae
City of Chicago.